

NEWS RELEASE

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NINE STATES SUE BUSH ADMINISTRATION FOR GUTTING KEY COMPONENT OF CLEAN AIR ACT

Nine states today filed a lawsuit challenging new Bush Administration regulations that gut a key provision of the federal Clean Air Act. The Administration's action represents the first major weakening of the landmark federal environmental law since it was signed into law by President Nixon in 1970.

The changes initiated by the Bush Administration would exempt thousands of industrial air pollution sources, including coal-fired power plants, from the [New Source Review](#) provision of the Clean Air Act. New Source Review requires power plants and other industrial facilities to add modern air pollution controls to smokestacks when the facilities are upgraded or modified and substantially increase air pollution.

New Source Review is the foundation of a series of lawsuits brought by the states, the federal Environmental Protection Agency and environmental groups in 1999, 2000 and 2001 against dozens of old coal-fired power plants and other industrial sources.

From its first days in office, the Bush Administration has criticized New Source Review and sought to undermine its implementation, despite the prior filing of the clean air lawsuits by the federal government and despite the conclusion of U.S. Attorney General John Ashcroft's Department of Justice that the New Source Review lawsuits are legally sound.

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By adopting new regulations that will lead to dirtier air, the Bush Administration is violating the Clean Air Act. Congress passed the Clean Air Act intending that the Environmental Protection Agency use its powers to sharply reduce air pollution across the nation. Since 1970, successive Democratic and Republican administrations have either strengthened the Clean Air Act or left it untouched. The Bush Administration is the first in three decades to attempt deliberately to gut key components of the Clean Air Act.

The changes made today are particularly damaging because, unlike the draft version of the regulations, the Bush Administration has made the new rules effectively mandatory for all states, potentially undermining any state's ability to adopt stronger clean air protections. Also, the final regulations give facilities -- including those that EPA and the states accuse of violating the law -- significant unmonitored discretion to determine when the law applies.

New York Attorney General Eliot Spitzer said: "The Bush Administration has taken an action that will bring more acid rain, more smog, more asthma, and more respiratory disease to millions of Americans. This action by the Bush Administration is a betrayal of the right of Americans to breathe clean, healthy air. I join my colleagues from other states to challenge this assault on the Clean Air Act and continue the fight to achieve the goals that the law intended."

Connecticut Attorney General Richard Blumenthal said: "It seems that the Bush Administration's New Year's resolution is to appease the energy industry by sacrificing the lives of people in the Northeast. In effect, the Administration is saying: 'Northeast Drop Dead.' The NSR standards are a matter of life and death to countless citizens of the Northeast who receive all of the pollution but none of the power from these contaminating coal burning plants in the Midwest. Our fight in court and elsewhere will be to uphold the letter and spirit of the Clean Air Act, endorsed by the first Bush Administration and now eviscerated by the second."

Maine Attorney General G. Steven Rowe said: "I find it incredible that we would have to resort to a lawsuit to prevent the Bush Administration from gutting the Clean Air Act. Our national government should be looking out for the health interests of American people, rather than the corporate financial interests of dirty power plants."

Massachusetts Attorney General Thomas Reilly said: "On the eve of the New Year, EPA officials have published new regulations that weaken the Clean Air Act and threaten the health of Massachusetts' residents as well as millions of Americans in the coming years with the creation of dirtier air, more smog and pollution. We will not sit back and allow the Bush Administration to put the industry's short-term interests before the health of the American public."

Acting New Hampshire Attorney General Stephen J. Judge said: "Industry made a social contract with the American public thirty years ago to install state-of-the-art pollution controls if they modernized worn out equipment. Some have broken that contract, and we have sued them because our lakes, forests and streams are being degraded by the acid attack of their emissions. EPA is rewriting the contract and environmental policy. Now the courts must decide whether the regulators and industry are meeting their obligations under the Clean Air Act."

New Jersey Attorney General David Samson said: “These new rules will allow old, dirty plants to continue to operate and will provide a disincentive for building new and more efficient facilities that emit less pollution. New Jersey and the other states joining in the lawsuit have fought hard for necessary pollution controls to protect the health of our citizens. We will not go backward on this issue.”

Rhode Island Attorney General Sheldon Whitehouse said: “It is outrageous and deeply frustrating that the Bush Administration has ignored the concerns of the Northeast and is now implementing regulatory changes that, if left unchallenged, would actually increase rather than decrease the amount of pollution from Midwestern power plants that spew pollution into Rhode Island and threaten our health, and the health of our kids. We are standing up to the Bush Administration and pursuing our legal options to prevent the EPA from making it easier for power plants to continue to pollute our air, make Rhode Islanders sick and damage our quality of life.”

Vermont Attorney General William H. Sorrell said: “We have to fight this fight. We cannot sit back and let acid rain cause more damage to our environment.”

The states are united in opposing these changes because they are hard hit by the damaging impacts of smog and acid rain, both caused by nitrogen oxide and sulfur dioxide emissions from coal-burning power plants and other industrial sources.

The lawsuit challenges the “clean unit” exclusion, the new emissions test, the revised approach for calculating baseline emissions, and the plant-wide applicability limits. The Attorneys General believe that these changes are so sweeping and damaging that the Environmental Protection Agency can not make them without Congressional approval. The rollbacks violate both the Clean Air Act itself and the Administrative Procedure Act, which sets forth the process government agencies must follow to promulgate regulations.

The following elements of the new rules are being challenged by the states’ lawsuit:

“Clean unit” exclusion. This rule creates an exemption from New Source Review for facilities that install the equivalent of what was considered to be “Best Available Control Technology” at the time. Such “clean units” would then be exempt for up to ten years from New Source Review. As a result, these facilities could undertake projects that would increase emissions without having to install newer, more effective, pollution devices on their smokestacks.

New Emissions Test. Under the new rule, facilities will be able to exclude from the test for new pollution controls those emission increases that they attribute to increased demand for their products. The new rule provides for little independent oversight by the government of this determination by the polluter.

Revised approach for calculating baseline emissions. EPA would allow facilities (other than power plants) to set their “baseline” emission levels at the highest polluting level of any two consecutive years out of the last ten years. Thus, polluters could significantly increase their air pollution over current levels without installing pollution controls.

Plant-wide applicability limits. EPA will exempt polluters from New Source Review if they agree to a cap on their air pollution. The cap on a given facility could be set far higher than the facility's current emissions, allowing pollution to increase far above current levels and remain uncontrolled even though the Clean Air Act intended air pollution to decrease over time.

The regulatory changes, which were threatened for months, were announced by Environmental Protection Agency Administrator Christine Todd Whitman on November 22, 2002 – the Friday before Thanksgiving – and were published in the Federal Register today – New Years Eve. The lawsuit was filed today in federal court in the U.S. Court of Appeals for the District of Columbia Circuit.

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